

Understanding the

Chesapeake Bay Preservation Ordinance Amendments

*Important information
for Fairfax County
homeowners*



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In 1988, the commonwealth of Virginia enacted the Chesapeake Bay Preservation Act (Bay Act). The Bay Act required the 84 Virginia communities, including Fairfax County, which border on the tidal portions of rivers that drain into the Chesapeake Bay (Tidewater jurisdictions) to institute water quality protection measures to improve the declining health of this unique national resource and its tributaries. The goal was to plan for and manage the adverse environmental impacts of growth and development in a manner that balances the objectives of improved water quality and continued growth. The criteria for implementation of the Bay Act are contained in the state's Chesapeake Bay Preservation Area Designation and Management Regulations originally adopted in 1989.

Here in Fairfax County, we have tried to do our fair share in combating the problem of pollution in the bay. Ten years ago, the Board of Supervisors enacted a Chesapeake Bay Preservation Ordinance which regulates the kinds of development that can occur in sensitive areas along streams that drain into the Potomac River and eventually the bay. These are known as Resource Protection Areas or RPAs. The remainder of the land in Fairfax County has been designated as a Resource Management Area or RMA. RMAs are comprised of lands that, if improperly used or developed, have a potential for causing significant harm to the water quality or for diminishing the functional value of the RPA. Collectively, RPAs and RMAs are known as Resource Preservation Areas.

Recently, the Chesapeake Bay Local Assistance Board, a state entity, mandated additional measures that must be enacted by all Tidewater jurisdictions. In order to comply with the state's new directives, the Fairfax County Board of Supervisors approved amendments to its Chesapeake Bay Preservation Ordinance that became effective on Nov. 18, 2003. The following information is provided to help Fairfax County property owners understand the recent amendments adopted by the Board of Supervisors. The recent amendments will not only help the health of the Chesapeake Bay, but will also safeguard the quality of our own rivers and streams.

"We do not inherit the earth from our ancestors; we borrow it from our children."

– Ancient Indian Proverb

Why were the amendments adopted?

The Chesapeake Bay Local Assistance Board, a state entity, adopted amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations on Dec. 10, 2001, with an effective date of March 1, 2002. The state mandated that Fairfax County and other Tidewater jurisdictions implement these changes to the regulations by Dec. 31, 2003. Fairfax County began considering the amendments in January 2003, when the Planning Commission held a public hearing. Since that time, meetings were held with the Planning Commission Environment Committee and the Environmental Quality Advisory Council and a second public hearing was held in April 2003. On May 7, 2003, the Planning Commission recommended that the Board of Supervisors adopt the proposed amendments to the Chesapeake Bay Preservation Ordinance. The Board of Supervisors held a public hearing on May 19, 2003, and adopted the amendments during their regularly scheduled Board meeting on July 7, 2003.

What amendments were adopted?

The Board of Supervisors adopted amendments to Chapter 101 (Subdivision Ordinance), Chapter 104 (Erosion and Sedimentation Control), Chapter 112 (Zoning Ordinance) and Chapter 118 (Chesapeake Bay Preservation Ordinance) of the Code of the County of Fairfax, Virginia and to the Public Facilities Manual. These amendments implement the state's revisions to the Chesapeake Bay Preservation Designation and Management Regulations.

The centerpiece of the revised state regulations is that Resource Protection Areas (RPAs) must now be designated around all water bodies with perennial flow. Perennial flow means that water always flows in the stream or other water body except during periods of drought. The difference between the old language and the amended language is the replacement of "tributary streams" with "water bodies with perennial flow." Tributary streams are only those perennial streams that are depicted on U.S. Geological Survey maps. This change was mandated by the state and is responsible for a significant expansion of RPAs throughout Fairfax County.

The amendments also included changes to the performance criteria for development and redevelopment in RPAs and RMAs; changes in the information to be provided with plans of development and applications for

construction permits; and changes to the procedures and criteria for the granting of exceptions to the requirements of the Chesapeake Bay Preservation Ordinance.

When did the amendments become effective and how do I know if they affect my property?

The amendments adopted on July 7, 2003, became effective on Nov. 18, 2003, the day following adoption by the Board of Supervisors of an amended Chesapeake Bay Preservation Area map showing the location of RPAs as defined under the amended ordinance. The Department of Public Works and Environmental Services conducted field studies to identify all perennial streams throughout the county and used this information to prepare the amended map.

The maps display the boundaries of the RPAs adopted by the Board in 1993 and the additional RPAs adopted by the Board in 2003. The maps display the general locations of RPA boundaries for planning purposes and the actual limits may be further refined by detailed field studies conducted at the time a plan is submitted to obtain a permit to develop a property.

The revised maps are available at www.fairfaxcounty.gov/dpwes. You will need your tax map reference number to access the mapping information for your property. You can find that number on the county's Web site at www.fairfaxcounty.gov/dta. Scroll to the bottom of the page, enter your address and click on Search—the resulting information will include your tax map reference number.

What are Resource Protection Areas (RPAs) and buffers?

RPAs are the corridors of environmentally sensitive land that lie alongside or near the shorelines of streams, rivers and other waterways. In their natural condition, RPAs protect water quality by filtering pollutants out of stormwater runoff, reducing the volume of stormwater runoff, preventing erosion and performing other important biological and ecological functions.

RPAs include any land characterized by one or more of the following features:

- (1) a tidal wetland
- (2) a tidal shore
- (3) a water body with perennial flow

- (4) a nontidal wetland connected by surface flow and contiguous to a tidal wetland or water body with perennial flow
- (5) a buffer area that includes any land within a major floodplain or any land within 100 feet of a feature listed in (1)-(4).

What happens if Resource Protection Areas (RPAs) are not protected?

Because RPAs are so close to water bodies, disturbing them allows more pollutants to enter our waters and, eventually, the Chesapeake Bay. Stormwater runoff picks up and carries oil from roads, soil from construction sites, fertilizers and pesticides from farms and lawns, harmful bacteria from animal waste and trash directly into our streams.

In addition, if RPAs are not protected, or if there is no protected stream corridor, other impacts such as stream bank and channel erosion, habitat destruction and a decrease in the stream's biological diversity can result. A naturally vegetated RPA, or buffer, slows down runoff and absorbs it, thereby reducing stream bank erosion; filtering sediment, phosphorus and other pollutants from runoff; and performing other important ecological and biological functions.

How will this affect my property?

RPAs generally are areas into which development may not encroach. However, the ordinance protects existing structures and uses in the RPA. Such structures and uses, including lawns and gardens and other maintained landscaping, can remain and be maintained but may not be expanded unless a waiver or exception is granted. Also, if a home were to be destroyed by fire or other casualty loss, it could be rebuilt.

In order to maintain the functional value of the RPA buffer, indigenous vegetation may be removed, subject to approval by the county, from a buffer area only to provide for reasonable sight lines, access paths, general woodlot management and habitat management. Noxious weeds and dead, diseased, or dying trees or shrubbery may be removed, subject to approval by the county, provided that where they are removed, they are replaced with other native vegetation that is equally effective in retarding runoff, preventing erosion and filtering nonpoint source pollution from runoff. The removal of indigenous vegetation to create lawns is not allowed.

The county's ordinance includes some additional protections both for existing lots that were created prior to the effective date of the amendments and for lots that are developed with existing homes. These protections allow a new home or an addition to be constructed on such lots through an administrative waiver.

What are the provisions for construction of minor additions?

For those lots that have areas of RPA on them, the ordinance provides relief from the full effects of the RPA restrictions through the administrative waiver provisions. The provisions allow minor additions of up to 1,000 sq. ft. or 2 percent of the lot area up to a maximum of 2,500 sq. ft. of new impervious area in the RPA for homes constructed prior to the original effective date of the ordinance, July 1, 1993, with respect to both the old and new RPA areas. For homes that were constructed between July 1, 1993, and the effective date of the 2003 amendments, Nov. 18, 2003, minor additions are only allowed to encroach into the new RPA areas created by the amendments. This relief is provided to the current owners of these homes because the regulations were not in effect at the time the homes were built and the original builders did not have the opportunity to plan the location of these homes to avoid future conflicts with the RPA.

The state regulations on which the county's ordinance is based do not permit detached structures to be treated as minor additions. The construction of detached structures and larger additions in the RPA are still possible, but would be subject to an exception process requiring a public hearing.

Are fences allowed within an RPA?

Fences are permitted in the RPA without an exception or waiver subject to compliance with certain design requirements that collectively maintain the functional value of the buffer. Fences should be designed so that they do not inhibit or alter surface flow (i.e., water must be able to flow under and through the fence unimpeded so that sheet flow conditions are maintained) and vegetation may only be removed to provide for the actual placement of the fence. Where vegetation is removed it must be replaced with other native vegetation that is equally effective in retarding runoff, preventing erosion and filtering nonpoint source pollution from runoff. Fences should be located to avoid the removal of trees. Obviously, if the

fence were to be placed in an area that was an existing maintained lawn, the revegetation requirement would not be applicable.

Are sheds allowed within an RPA?

The administrative waiver available for minor additions is not available for construction of detached accessory structures such as sheds. Accessory structures are specifically prohibited in the state regulations from consideration as minor additions. However, the construction of small sheds that do not require a building permit (the current limit under the Virginia Uniform Statewide Building Code is currently 150 sq. ft. of building area) constructed over maintained grass lawns are considered to be an inconsequential modification to an existing use and may be permitted. Locating a shed in an undisturbed RPA area is more problematic because there would normally be at least some other place on the lot that the shed could be located without encroaching into the RPA and should be discussed with county staff.

Are decks allowed within an RPA?

Decks are treated as minor additions under the ordinance and therefore may be permitted through the administrative waiver process. As with other types of minor additions, decks are allowed to encroach into both the old and new RPA areas for homes constructed prior to the original effective date of the ordinance, July 1, 1993. For homes that were constructed between July 1, 1993, and the effective date of the amendments, Nov. 18, 2003, decks are only allowed to encroach into the new RPA areas created by the amendments.

What are the loss of buildable area provisions?

An administrative waiver process is available for construction of new homes on lots platted prior to the effective date of the amendments to the ordinance, Nov. 18, 2003. The loss of buildable area provisions allow for construction of 5,000 sq. ft. of impervious area in the RPA exclusive of the driveway and 10,000 sq. ft. of disturbed area in the RPA exclusive of the driveway and septic field. The allowed encroachment will be the minimum necessary to afford relief and may only extend 50 feet into the RPA. Mitigation of the encroachment will be required. The construction of new homes in the RPA not meeting the above requirements is still possible, but would be subject to an exception process requiring a public hearing.

Are there penalties for violating the RPA restrictions?

Non-compliance with the RPA restrictions is a violation of the county's Chesapeake Bay Preservation Ordinance and can result in penalties. Violators will be required to restore the RPA in accordance with county guidelines. An RPA Restoration Plan must be developed and submitted to the Department of Public Works and Environmental Services for review and approval. The objective of the plan is to restore the RPA's primary functions so it can again remove pollutants from stormwater runoff.

How can I get more information?

A video program about the amendments is available for loan at all Fairfax County public libraries. In addition, programming on this and other environmental issues is regularly shown on Channel 16. Please check local programming schedules for dates and times or visit www.fairfaxcounty.gov/living/cable for a program listing.

Information about the amendments is available on the county's Web site at www.fairfaxcounty.gov/dpwes. Additional background information on the state's laws and regulations is available from the Chesapeake Bay Local Assistance Department at www.cblad.state.va.us or by calling 800-243-7229, TTY 711. If you have any questions about available information or would like additional copies of this brochure, please call the Fairfax County Office of Public Affairs at 703-324-3187, TTY 703-324-2935. If you have questions about the Chesapeake Bay Preservation Ordinance or the adopted amendments, please call the Office of Site Development Services, a division of the Department of Public Works and Environmental Services, at 703-324-1720, TTY 711.

Fairfax County is committed to a policy of nondiscrimination in all county programs, services and activities and will provide reasonable accommodations upon request. To request special accommodations, call the Office of Public Affairs at 703-324-3187, TTY 703-324-2935.